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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Colusa)

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN MANUEL HERNANDEZ,

Defendant and Appellant.

C086628

(Super. Ct. No. CR56634)

Defendant Juan Manuel Hernandez appeals from his conviction for inflicting corporal injury to a cohabitant. At sentencing, the trial court orally pronounced the amounts and statutory bases for 13 separate fines and fees and incorporated by reference the fines and fees listed in the probation report, which included the fines and fees pronounced by the trial court and two additional fees.

On appeal, defendant contends only that the trial court was not permitted to incorporate the fines and fees listed in the probation report by reference. In supplemental briefing, defendant contends the trial court improperly imposed fines and fees without assessing his present ability to pay. Because defendant has not first requested relief from the trial court, we dismiss his appeal.

FACTUAL AND PROCEDURAL BACKGROUND

We dispense with a detailed recitation of the facts because the facts of defendant's crime are irrelevant to the sole issue on appeal. Defendant pleaded no contest to inflicting corporal injury to a cohabitant (Pen. Code, § 273.5, subd. (a))¹ and enhancement allegations that he: (1) personally inflicted great bodily injury on the victim under circumstances involving domestic violence (§ 12022.7, subd. (e)); (2) served a prior prison term (§ 667.5, subd. (b)); and (3) was previously convicted of a serious felony (§ 667, subd. (a)(1)). The trial court sentenced him to 15 years in prison. Pursuant to the plea agreement, the court suspended execution of the sentence and granted defendant 10 years of probation, which included a three-year sentence in county jail followed by a lengthy rehabilitation program. Approximately five months later, defendant admitted three violations of the terms of his probation.

The trial court terminated probation and executed the previously suspended 15-year prison sentence. At sentencing, the court imposed multiple fines and fees. The court orally pronounced the statutory bases and amounts of 13 fines and fees. The court also "incorporate[d] by reference as though fully set forth in the oral pronouncement of judgment the fine and fee amounts set forth on pages 9 and 10 of the probation officer's report and recommendation" The probation report included two recommended fees under section 1203.1b, subdivision (a) (§ 1203.1b(a)) not orally pronounced: \$220 for

¹ Further undesignated statutory references are to the Penal Code.

the preparation of the Probation Officer's Supplemental Report, and \$100 for the months the probation department supervised defendant, both to be paid to the Colusa County Probation Department. Defendant neither objected at the time of sentencing nor brought this issue to the attention of the trial court at some point after his sentencing, as he implicitly concedes in his briefing.

DISCUSSION

Defendant argues on appeal that the trial court erred in failing to individually state the authority for and the amounts of the imposed fines and fees. The People argue defendant's claim is not properly before this court because section 1237.2 required him to bring his claim in the trial court before raising it on appeal. Defendant responds section 1237.2 does not apply because of the complexity of his claim. We agree with the People.

Section 1237.2 provides: "An appeal may not be taken by the defendant from a judgment of conviction on the ground of an error in the imposition or calculation of fines, penalty assessments, surcharges, fees, or costs unless the defendant first presents the claim in the trial court at the time of sentencing, or if the error is not discovered until after sentencing, the defendant first makes a motion for correction in the trial court, which may be made informally in writing. The trial court retains jurisdiction after a notice of appeal has been filed to correct any error in the imposition or calculation of fines, penalty assessments, surcharges, fees, or costs upon the defendant's request for correction. This section only applies in cases where the erroneous imposition or calculation of fines, penalty assessments, surcharges, fees, or costs are the sole issue on appeal."

Defendant made no claim of error to the trial court, either at the time of sentencing or subsequent thereto, as required by section 1237.2. He argues that provision does not apply to his appeal because he is complaining about what fees the court *intended* to impose, not a *miscalculation* of those fees. We disagree. "The plain language of section 1237.2 clearly makes a claim to the trial court a prerequisite to any appeal which solely

involves ‘an error in the *imposition* or calculation of fines, penalty assessments, surcharges, fees, or costs’ [Citation.]” (*People v. Alexander* (2016) 6 Cal.App.5th 798, 801, italics added.) “[T]his language does not limit section 1237.2’s reach only to situations where the fee simply did not apply at all or was a result of mathematical error.” (*Ibid.*) The phrase “any error in the imposition . . . of . . . fees” includes a claim of error involving the oral pronouncement of applicable fines and fees.

Accordingly, we dismiss the appeal. (See *People v. Alexander, supra*, 6 Cal.App.5th at p. 801 [dismissing appeal pursuant to § 1237.2 where sole issue was an alleged error in imposing a restitution fine].)²

DISPOSITION

The appeal is dismissed.

/s/
Duarte, J.

We concur:

/s/
Butz, Acting P. J.

/s/
Renner, J.

² Defendant argues in supplemental briefing that the trial court’s imposition of a \$300 restitution fine (§ 1202.4), a \$40 court operation fee (§ 1465.8), and a \$30 criminal conviction assessment (Gov. Code, § 70373) must be reversed or stayed until and unless the prosecution can prove that defendant has the present ability to pay the fine. But like defendant’s other claim, section 1237.2 deprives us of jurisdiction to hear the claim.